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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 MICCAEL ALSHAIKH, et al.,
13 Plaintiffs,
14 vs.
15 METROPOLITAN TRANSIT, et al.,
16 Defendants.

CASE NO. 11cv140 BEN (CAB)

**ORDER GRANTING UNITED
STATES' MOTION TO DISMISS
AND REMANDING TO STATE
COURT**

17
18 **INTRODUCTION**

19 On January 24, 2011, this action was removed from state court based on the Plaintiffs naming
20 a federal employee as a defendant and the assertion of a federal claim under the Federal Tort Claims
21 Act. Plaintiffs' claims arise out of injuries Plaintiff Alshaikh suffered at a trolley station when he was
22 attacked by three unknown assailants. The United States, having certified that the named federal
23 defendant was acting within the scope of his office at the time the claim arose, now moves to dismiss.
24 Defendant United States moves to dismiss Plaintiffs' claims because Plaintiffs failed to file the
25 requisite administrative claim with the Federal Transit Administration before filing suit. Plaintiffs
26 have filed an opposition to the motion. Because Plaintiffs have failed to state a claim, the United
27 States' motion to dismiss is **GRANTED** and the case is **REMANDED** to the Superior Court of
28 California, County of San Diego.

1 **DISCUSSION**

2 Claimants, like Plaintiffs, cannot sue the United States without “first giv[ing] the
3 appropriate federal agency the opportunity to resolve the claim.” *Cadwater v. United States*, 45
4 F.3d 297, 300 (9th Cir. 1995) (citing 28 U.S.C. § 2675(a)). “This administrative claim prerequisite
5 is jurisdictional” and “must be strictly adhered to.” *Id.* Section 2675 prohibits a claim against the
6 United States for personal injury “unless the claimant shall have first presented the claim to the
7 appropriate Federal agency and his claim shall have been finally denied by the agency in writing.”

8 Plaintiffs have not alleged that a claim was submitted to the appropriate federal agency or
9 that a claim was denied in writing. Plaintiffs argue in opposition that they submitted a City of San
10 Diego claim form to the Risk Management Department in compliance with California Government
11 Code § 900. But, submission of a City claim form to a local entity does not meet the requirement
12 for a federal claim to proceed, *i.e.*, submit a claim “to the appropriate *Federal* agency” and have it
13 denied in writing by that federal agency. 28 U.S.C. § 2675(a) (emphasis added). Plaintiffs’ claim
14 against the United States is **DISMISSED** without prejudice.

15 Where all federal claims are dismissed in an action containing both federal and state law
16 claims, a federal court may decline to exercise supplemental jurisdiction over the remaining state
17 law claims. 28 U.S.C. § 1367(c)(3). Here, the federal claim and the only federal defendant are
18 being dismissed. Therefore, the Court declines to exercise supplemental jurisdiction over the
19 remaining claims and defendants and remands the case to the Superior Court of California, County
20 of San Diego, for further proceedings.

21 **CONCLUSION**

22 Defendant United States’ motion to dismiss is **GRANTED**. The Court declines to exercise
23 supplemental jurisdiction over the remaining state law claims and non-federal defendants. The
24 case is **REMANDED** to the Superior Court of California, County of San Diego, for further
25 proceedings. The March 28, 2011 hearing date is vacated.

26 **IT IS SO ORDERED.**

27 DATED: March 11, 2011

28 
Hon. Roger T. Benitez
United States District Court